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No. 06-1498

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

WARNER-LAMBERT COMPANY LLC AND PFIZER INC.,
Petitioners,

v.

KIMBERLY KENT, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

JOINT APPENDIX

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November 21, 2007

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PETITION FOR CERTIORARI FILED MAY 10, 2007
CERTIORARI GRANTED SEPTEMBER 25, 2007

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Petitioner's Appendix to the 06-1498 Petition For A Writ Of Certiorari at the following pages.

Desiano v. *Warner-Lambert Co.*, No. 05-1705-cv (2d Cir. Feb. 12, 2007) (order denying rehearing and rehearing en banc) 39a

Desiano v. *Warner-Lambert & Co.*, 467 F.3d 85 (2d Cir. 2007) (amended opinion) 1a

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Complaint and Demand For Jury Trial, *Armstrong et al. v. Warner-Lambert Co. et al.*, No. 01-73249 (E.D. Mich. filed Aug. 20, 2001) 332a

Class Action Complaint and Demand for Jury-Trial, *Kent et al. v. Warner-Lambert Co. et al.*, No. 01-71806 (E.D. Mich. filed Apr. 17, 2001) 341a

Complaint and Demand for Jury Trial, *Sherman et al. v. Warner-Lambert Co. et al.*, No. 03-70501 (E.D. Mich. filed Jan. 5, 2003) 351a

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(Foley Square)

CIVIL DOCKET FOR CASE #: 1:00-cv-05117-LAK

KENT, *et al.*,
Plaintiffs,

v.

WARNER-LAMBERT CO., *et al.*,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
07/12/2000	1	Filed True Copy of Order from MDL Panel transferring action from U.S.D.C. for the Eastern District of Michigan, Docket # 2:00-cv-71806 ; Mailed letter requsting transfer of their file. (bm) Modified on 07/14/2000 (Entered 07-14-2000)
		* * * *
07/12/2000		Case accepted as related to MDL # 1348 & M21-85. (bm) (Entered: 07/14/2000)
07/25/2000		Certified copy of transfer order and file received from Eastern District of Michigan MDL# 1348. (bm) (Entered: 07/25/2000)
		* * * *

DATE	NO.	PROCEEDINGS
10/17/2000		Consolidated Member Case. Lead Case Number: 1:00cv2843 . (dcap) (Entered: 10/19/2000)
		* * * *
01/26/2001	4	ANSWER to Amended Complaint by Warner-Lambert Co., Parke-Davis Division (Attorney David Klingsberg from the Firm: Kaye, Scholer). (jp) (Entered: 01/30/2001)
		* * * *
01/25/2005		MOTION for an Order pursuant to Rule 12(c) of the FRCP entering Judgment on the Pleadings on all claims asserted by plaintiffs. Declaration of Wendy S. Dowse in support attached. Document filed by Warner-Lambert Company, Parke-Davis Division. Original entry in 00cv2843 document number 2798. (yv,) (Entered: 01/28/2005)
01/25/2005		MEMORANDUM OF LAW in Support re: [2798] MOTION for Judgment on the Pleadings. Document filed by Pfizer, Inc., Warner Lambert Company, Parke-Davis. Original entry in 00cv2843 document number 2799. Filed In Associated Cases: 1:00-cv-02843-LAK-GWG,1:00-cv-05117-LAK, 1:01-cv-02242-LAK, 1:03-cv-03488-LAK (yv,) Modified on 1/28/2005 (yv,). (Entered: 01/28/2005)
		* * * *

DATE	NO.	PROCEEDINGS
02/18/2005	8	REPLY MEMORANDUM OF LAW in Support re: [2798] MOTION for Judgment on the Pleadings. Document filed by Pfizer, Inc., Warner Lambert Company, Parke-Davis. Original entry in 00cv2843 document number 2922. Filed In Associated Cases: 1:00-cv-02843-LAK-GWG, 1:00-cv-05117-LAK, 1:03-cv-03488-LAK, 01-cv-9817-LAK (yv,) Modified on 3/2/2005 (yv,). (Entered: 03/02/2005)
02/28/2005	7	PRETRIAL ORDER NO. 355 (Michigan Plaintiffs – Motion for Judgment on the Pleadings) Defendants' motion for judgment on the pleadings dismissing the complaints is granted for the reasons stated on the record in open court this day (Signed by Judge Lewis A. Kaplan on 2/24/05) Original entry in 00cv2843 document number 2918. Filed In Associated Cases: 1:01-cv-0050-LAK,1:01-cv-9817-LAK, 1:04-cv-3957-LAK, 1:00-cv-02843-LAK-GWG, 1:00-cv-05117-LAK, 1:01-cv-02242-LAK,1:03-cv-03488-LAK, 1:04-cv-10031-LAK(yv,) Modified on 3/1/2005 (yv,). (Entered: 03/01/2005)
03/02/2005		CLERK'S JUDGMENT That for the reasons stated in the Court's Order dated February 24, 2005, defendants? [sic] motion for judgment on the pleadings dismissing the complaints

DATE	NO.	PROCEEDINGS
		are granted. (Orig. filed in case no. 00 Civ. 2843 (LAK) as doc. # 2926). (Signed by J. Michael McMahon, clerk on 3/2/05) (ml,) (Entered: 03/02/2005)
03/07/2005		Mailed notice of Right to Appeal re: Clerk's Judgment, and to Attorney(s) of Record: Wendy Sabina Dowse, Steven Glickstein, David Klingsberg, Bonnie L. Mayfield, John D. Peters, Daniel J. Stephenson. (lma,) (Entered: 03/08/2005)
03/25/2005		NOTICE OF APPEAL from [7] Pretrial Order. Document filed by Kimberly Kent, Emmett Kent. Filing fee $ 255.00, receipt number E 538534. Copies of Notice of Appeal mailed to Attorney(s) of Record: Kaye Scholer, L.L.P.; Lieff, Cabraser, Heimann & Bernstein, L.L.P.; Mathis & Adams, P.C.; Charfoos & Christensen, P.C.;. Goldberg, Persky & White, P.C.; Christopher S. Varjabedian, P.C. ORIGINAL DOCUMENT ENTERED IN CASE# 00cv2843, DOC. #2990) (tp,) (Entered: 03/30/2005)
03/30/2005		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: Notice of Appeal. (tp,) (Entered: 03/30/2005)
03/30/2005		Transmission of Notice of Appeal to the District Judge re: Notice of Appeal. (tp,) (Entered: 03/30/2005)

DATE	NO.	PROCEEDINGS
04/19/2005	9	ENDORSED LETTER addressed to Judge Kaplan from David Klingsberg dated 4/7/05 re: clarification of Sections 2.a & b of Pretrial Order 366 insofar as it refers to a 12/1/03 discovery deadline. The origin or the 12/1/03 date is arbitrary (Signed by Judge Lewis A. Kaplan on 4/14/05) (yv,) (Entered: 04/20/2005)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(Foley Square)

CIVIL DOCKET FOR CASE #: 1:01-cv-09817-LAK

ARMSTRONG, *et al.*,
Plaintiffs,

v.

WARNER-LAMBERT CO., *et al.*,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
11/07/2001	1	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL...transferring action from the U.S.D.C. for the Eastern District of Michigan, Docket No.: 2:01-cv73249, MDL No.: 1348, M No.: 21-85, to the S.D.N.Y. Mailed letter requesting transfer of their file. (db) (Entered: 11/08/2001)
		* * * *
11/07/2001		Case accepted as related to MDL 1348 & M 21-85. (db) (Entered: 11/08/2001)
11/08/2001		MDL Transfer In: Received Certified Copy of docket entries and file from the District of Michigan, Docket No.: 2:01cv73249, MDL No.: 1348. (gmo) (Entered: 01/10/2002)

DATE	NO.	PROCEEDINGS

* * * *

12/17/2004		RULE 7.1 DISCLOSURE STATEMENT. Document filed by Parke-Davis Division, Warner-Lambert Company. Received in night deposit box on 12/17/04 at 5:48 p.m. Original entry in 00cv2843 document number 2746.(yv,) (Entered: 12/21/2004)
12/17/2004		MOTION for an Order pursuant to FRCP 6(b)(2) allowing defendant to serve and file an answer out of time. Affirmation of Steven Glickstein in support attached. Document filed by Parke-Davis Division, Warner-Lambert Company. Received in night deposit box on 12/17/04 at 5:48 p.m. Original entry in 00cv2843 document number 2747. (yv,) (Entered: 12/21/2004)
12/17/2004		MEMORANDUM OF LAW in Support re: MOTION for an Order pursuant to FRCP 6(b)(2) allowing defendant to serve and file an answer out of time. Document filed by Parke-Davis Division, Warner-Lambert Company. Received in night deposit box on 12/17/04 at 5:48 p.m. Original entry in 00cv2843 document number 2748. (yv,) (Entered: 12/21/2004)

DATE	NO.	PROCEEDINGS
01/14/2005		PRETRIAL ORDER NO. 341 (Armstrong - Motion for Extension of Time) Defendant's motion for leave to serve and file an answer out of time, which is not opposed, is granted (Signed by Judge Lewis A. Kaplan on 1/13/05) Copies mailed by Chambers. Original entry in 00cv2843 document number 2784.(yv,) (Entered: 01/17/2005)
01/18/2005		ANSWER to Complaint with JURY DEMAND. Document filed by Parke-Davis Division, Warner-Lambert Company. Original entry in 00cv2843 document number 2792. (yv,) (Entered: 01/19/2005)
01/25/2005		MOTION for an Order pursuant to Rule 12(c) of the FRCP entering Judgment on the Pleadings on all claims asserted by plaintiffs. Declaration of Wendy S. Dowse in support attached. Document filed by Parke-Davis Division, Warner-Lambert Company. Original entry in 00cv2843 document number 2798. (yv,) (Entered: 01/28/2005)
01/25/2005		MEMORANDUM OF LAW in Support re: MOTION for Judgment on the Pleadings. Document filed by Parke-Davis Division, Warner-Lambert Company. Original entry in 00cv2843 document number 2799. (yv,) (Entered: 01/28/2005)

DATE	NO.	PROCEEDINGS
02/14/2005	2	REPLY MEMORANDUM OF LAW in Support re: MOTION for Judgment on the Pleadings. Document filed by Parke-Davis Division, Warner-Lambert Company. Original entry in 00cv2843 document number 2922. (yv,) (Entered: 03/02/2005)
		* * * *
02/28/2005		PRETRIAL ORDER NO. 355 (Michigan Plaintiffs - Motion for Judgment on the Pleadings) Defendants' motion for judgment on the pleadings dismissing the complaints is granted for the reasons stated on the record in open court this day (Signed by Judge Lewis A. Kaplan on 2/24/05) Original entry in 00cv2843. document number 2918.(yv,) (Entered: 03/01/2005)
03/02/2005		CLERK'S JUDGMENT. That for the reasons stated in the Court's Order dated February 24, 2005, defendants? [sic] motion for judgment on the pleadings dismissing the complaints are granted. (Orig. filed in case no. 00 Civ. 2843 (LAK) as doc. # 2926). (Signed by J. Michael McMahon, clerk on 3/2/05) (ml,) (Entered: 03/02/2005)
03/07/2005		Mailed notice of Right to Appeal and to Attorney(s) of Record: Wendy Sabina Dowse, Steven Glickstein, David Klingsberg, John D. Peters, Alan Edward Rothman. (lma,) (Entered: 03/08/2005)

DATE	NO.	PROCEEDINGS
03/25/2005		NOTICE OF APPEAL from Pretrial Order. Document filed by Michael W. Herndon, Michael Kanakry, Mary Ann Kanakry, Julia Martin, Royal M. Martin, Janice L. Kimmel, Mona Przytulski, David A. Rice, Anita Schultz, Richard P. Schultz, Connie Armstrong, James K. Soukup, Jennifer St. Pierre, Donald Waun, Jeanene Waun, Lauranane Bradley, Raymond Bradley, Sr, Glenn Chandler, Billie Flynt, Shelly Grotenhius, Judy Hearn, Colleen Herndon. Filing fee $ 255.00, receipt number E 538534. Copies of Notice of Appeal mailed to Attorney(s) of Record: Kaye Scholer, L.L.P.; Lieff, Cabraser, Heimann & Bernstein, L.L.P.; Mathis & Adams, P.C.; Charfoos & Christensen, P.C.; Goldberg, Persky & White, P.C.; Christopher S. Varjabedian, P.C. ORIGINAL DOCUMENT ENTERED IN CASE #00cv2843, DOC. #2990. (tp,) (Entered: 03/30/2005)
03/30/2005		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: Notice of Appeal. (tp,) (Entered: 03/30/2005)
03/30/2005		Transmission of Notice of Appeal to the District Judge re: Notice of Appeal. (tp,) (Entered: 03/30/2005)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(Foley Square)

CIVIL DOCKET FOR CASE #: 1:03-cv-03488-LAK

SHERMAN, *et al.*,
Plaintiffs,

v.

WARNER-LAMBERT CO., *et al.*,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
05/15/2003	1	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL...transferring action from the U.S.D.C. for the Eastern District of Michigan, Docket No.: 2:03cv70501, MDL No.: 1348,, to the S.D.N.Y. Mailed letter requesting transfer of their file. (laq) (Entered: 05/20/2003)
		* * * *
05/15/2003		Case accepted as related to 1:00cv2843 and M21-85. Notice of assignment to follow. (laq) (Entered: 05/20/2003)
05/15/2003		CONSOLIDATED MDL CASE: Case consolidated with 1:00-cv-2843 (yv,) (Entered: 06/17/2004)

DATE	NO.	PROCEEDINGS
06/03/2003		MDL TRANSFER IN: Received certified copy of docket entries and file from the District of Eastern District of Michigan, Docket No.: 03cv70501, MDL No.: 1348. (gf) (Entered: 06/09/2003)
		* * * *
01/25/2005		MOTION for an Order pursuant to Rule 12(c) of the FRCP entering Judgment on the Pleadings on all claims asserted by plaintiffs. Declaration of Wendy S. Dowse in support, attached. Document filed by Warner-Lambert Co., Parke-Davis. Original entry in 00cv2843 document number 2798. (yv,) (Entered: 01/28/2005)
01/25/2005		MEMORANDUM OF LAW in Support re: [2798] MOTION for Judgment on the Pleadings. Document filed by Pfizer, Inc., Warner Lambert Company, Parke-Davis. Original entry in 00cv2843 document number 2799. Filed In Associated Cases: 1:00-cv-02843-LAK, 1:00-cv-05117-LAK,1:01-cv-02242-LAK, 1:03-cv-03488-LAK (yv,) Modified on 1/28/2005 (yv,). (Entered: 01/28/2005)

DATE	NO.	PROCEEDINGS

* * * *

02/18/2005	4	REPLY MEMORANDUM OF LAW in Support re: [2798] MOTION for Judgment on the Pleadings. Document filed by Pfizer, Inc., Warner Lambert Company, Parke-Davis. Original entry in 00cv2843 document number 2922. Filed In Associated Cases: 1:00-cv-02843-LAK-GWG, 1:00-cv-05117-LAK,1:03-cv-03488-LAK, 01-cv-9817-LAK(yv,) Modified on 3/2/2005 (yv,). (Entered: 03/02/2005)
02/28/2005	3	PRETRIAL ORDER NO. 355 (Michigan Plaintiffs - Motion for Judgment on the Pleadings) Defendants' motion for judgment on the pleadings dismissing the complaints is granted for the reasons stated on the record in open court this day (Signed by Judge Lewis A. Kaplan on 2/24/05) Original entry in 00cv2843 document number 2918. Filed In Associated Cases: 1:01-cv-0050-LAK,1:01-cv-9817-LAK, 1:04-cv-3957-LAK, 1:00-cv-02843-LAK-GWG, 1:00-cv-05117-LAK, 1:01-cv-02242-LAK,1:03-cv-03488-LAK, 1:04-cv-10031-LAK (yv,) Modified on 3/1/2005 (yv,). (Entered: 03/01/2005)

DATE	NO.	PROCEEDINGS
03/02/2005		CLERK'S JUDGMENT That for the reasons stated in the Court's Order dated February 24, 2005, defendants? [sic] motion for judgment on the pleadings dismissing the complaints are granted. (Orig. filed in case no. 00 Civ. 2843 (LAK) as doc. # 2926). (Signed by J. Michael McMahon, clerk on 03/02/05) (ml,) (Entered: 03/02/2005)
03/07/2005		Mailed notice of Right to Appeal re: Clerk's Judgment, and to Attorney(s) of Record: Wendy Sabina Dowse, Steven Glickstein, David Klingsberg, Bonnie L. Mayfield, John D. Peters, Maris Veidemanis. (Ima,) (Entered: 03/08/2005)
03/25/2005		NOTICE OF APPEAL from [3] Pretrial Order. Document filed by Linda Sherman. Filing fee $255.00, receipt number E 538534. Copies of Notice of Appeal mailed to Attorney(s) of Record: Kaye Scholer, L.L.P.; Lieff, Cabraser, Heimann & Bernstein, L.L.P.; Mathis & Adams, P.C.; Charfoos & Christensen, P.C.; Goldberg, Persky & White, P.C.; Christopher S. Varjabedian, P.C. ORIGINAL DOCUMENT ENTERED IN CASE #00cv2843, DOC. #2990. (tp,) (Entered: 03/30/2005)

DATE	NO.	PROCEEDINGS
03/30/2005		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: Notice of Appeal. (tp,) (Entered: 03/30/2005)
03/30/2005		Transmission of Notice of Appeal to the District Judge re: Notice of Appeal. (tp,) (Entered: 03/30/2005)

* * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(Foley Square)

CIVIL DOCKET FOR CASE #: 1:04-cv-03957-LAK

FISHER, *et al.*,
Plaintiffs,

v.

PFIZER, INC., *et al.*,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
05/25/2004	1	CERTIFIED TRUE COPY OF CONDITIONAL MDL TRANSFER IN ORDER FROM THE MDL PANEL... transferring this action from the United States District Court - Eastern District of Kentucky, Case Number: 2:04-cv-70880, MDL Number: MDL 1348. (Signed by Judge MDL Panel on 4/23/04) (laq,) (Entered: 06/02/2004)
		* * * *
06/28/2004		MDL TRANSFER IN: Received certified copy of docket entries and documents numbered 1-6 from the United States District Court - Eastern District of Michigan. Case Number: 2:04-cv-70880 (PJD), MDL Number: MDL 1348. (jjm,) (Entered: 07/27/2004)

DATE	NO.	PROCEEDINGS

* * * *

01/25/2005		MOTION for an Order pursuant to Rule 12(c) of the FRCP entering Judgment on the Pleadings on all claims asserted by plaintiffs. Declaration of Wendy S. Dowse in support attached. Document filed by Warner-Lambert Company, Parke-Davis, Pfizer, Inc. Original entry in 00cv2843 document number 2798. (yv,) (Entered: 01/28/2005)
01/25/2005		MEMORANDUM OF LAW in Support re: MOTION for Judgment on the Pleadings. Document filed by Warner-Lambert Company, Parke-Davis, Pfizer, Inc. Original entry in 00cv2843 document number 2799. (yv,) (Entered: 01/28/2005)
02/08/2005	3	RESPONSE to Motion re: MOTION for Judgment on the Pleadings.. Document filed by Nancy Fisher. (cd,) (Entered: 02/15/2005)

DATE	NO.	PROCEEDINGS
02/16/2005		REPLY MEMORANDUM OF LAW in Support re: MOTION for Judgment on the Pleadings. Document filed by Warner-Lambert Company, Parke-Davis, Pfizer, Inc. Original entry in 00cv2843 document number 2891. (yv,) (Entered:. 02/18/2005)
		* * * *
02/24/2005	4	RESPONSE to Motion re: MOTION for Judgment on the Pleadings. Document filed by Nancy Fisher. (cd,) (Entered: 03/04/2005)
02/28/2005		PRETRIAL ORDER NO. 355 (Michigan Plaintiffs - Motion for Judgment on the Pleadings) Defendants' motion for judgment on the pleadings dismissing the complaints is granted for the reasons stated on the record in open court this day (Signed by Judge Lewis A. Kaplan on 2/24/05) Original entry in 00cv2843 document number 2918.(yv,) (Entered: 03/01/2005)
03/02/2005		CLERK'S JUDGMENT That for the reasons stated in the Court's Order dated February 24, 2005, defendants? [sic] motion for judgment on the pleadings dismissing the complaints are granted. (Orig. filed in case no. 00 Civ. 2843 (LAK) as doc. # 2926). (Signed by J. Michael McMahon, clerk on 3/2/05) (ml,) (Entered: 03/02/2005)

DATE	NO.	PROCEEDINGS
03/07/2005		Mailed notice of Right to Appeal re: Clerk's Judgment, and to Attorney(s) of Record: Wendy Sabina Dowse, Vanessa G. Fluker, Steven Glickstein, David Klingsberg, Bonnie L. Mayfield, Daniel J. Stephenson. (lma,) (Entered: 03/08/2005)
03/25/2005		NOTICE OF APPEAL from Pretrial Order. Document filed by Nancy Fisher. Filing fee $255.00, receipt number E 538534. Copies of Notice of Appeal mailed to Attorney(s) of Record: Kaye Scholer, L.L.P.; Lieff, Cabraser, Heimann & Bernstein, L.L.P.; Mathis & Adams, P.C.; Charfoos & Christensen, P.C.; Goldberg, Persky & White, P.C.; Christopher S. Varjabedian, P.C. ORIGINAL DOCUMENT ENTERED IN CASE #00cv2843, DOC. #2990. (tp,) (Entered: 03/30/2005)
03/30/2005		Transmission of Notice of Appeal and Certified Copy of Docket Sheet to US Court of Appeals re: Notice of Appeal. (tp,) (Entered: 03/30/2005)
03/30/2005		Transmission of Notice of Appeal to the District Judge re: Notice of Appeal. (tp,) (Entered: 03/30/2005)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCIT

Docket No.[s] : 05-1705-cv(L), 05-1743-cv,
05-1745-cv (CON)

CAESAR DESIANO AND GLORIA DESIANO, *et al.*,
Plaintiffs-Appellants,

v.

WARNER LAMBERT CO., *et al.*,
Defendants-Appellees.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
4/1/05	Copy of notice of appeal and district court docket entries on behalf of Gloria Desiano *et. al.* filed. [Entry date Apr 21 2005] [YK]
	* * * *
5/20/05	Order filed stating a pre-argument conference was held on May 13, 2005 in In re Rezulin Products Liab. Litig., 2d Cir.Dkt. Nos. 05-1743cv; 05-1745cv. Because all of the above referenced appeals stem from Judge Kaplan's Order in In re Rezulin Products Liab. Litig., MDL No. 1348, IT IS HEREBY ORDERED that all the above referenced appeals be, and hereby are CONSOLIDATED for all purposes. In re Rezulin Products Liab Litig., 2d Cir Dkt. No. 05-1705-cv(L) shall be designated accordingly

DATE	PROCEEDINGS
	as the lead appeal. (FS) [Entry date May 25 2005] [AM]
5/25/05	Notice to counsel in re: Order filed 5/20/05. [Entry date May 25 2005] [AM]
	* * * *
6/29/05	APPELLANT Davis, Alicia Miller, Barbara Fleming, Connie Gibson, ET AL , brief FILED with proof of service. [Entry date Jun 30 2005] [NG]
6/29/05	APPELLANT Davis, Alicia Miller, Barbara Fleming, Connie Gibson, ET AL joint appendix filed w/pfs. [Entry date Jun 30 2005] [NG]
7/27/05	APPELLEE Warner Lambert Co., brief filed with proof of service. [Entry date Jul 27 2005] [CI]
8/18/05	APPELLANT Davis, Alicia Miller, Barbara Fleming, Connie Gibson, ET AL , reply brief filed with proof of service. [Entry date Aug 26 2005] [CI]
	* * * *
11/8/05	Case heard before FEINBERG, CALABRESI, PARKER, C.JJ CD DATE: 11/08/05 [Entry date Nov 8 2005] [RD]

DATE	PROCEEDINGS
6/28/06	Acevedo-Barreto, Aiello, Alfred, Aranda-Ramos, ET AL; APPELLANT Janet Smith, Mary Jones, Milbergo Reyes, ET AL; APPELLEE Parke-Davis, Patricia Black, 28(J) letter received from Steven Glick-stein, counsel for Defendants Appellees, dated 6/28/06. [Entry date Jun 28 2006] [JP]
10/5/06	Judgment of the district court is VACATED and REMANDED by published signed opinion filed. (GC) [Entry date Oct 5 2006] [AM]
10/5/06	Judgment filed. [Entry date Oct 5 2006] [AM]
10/5/06	Notice to counsel in re: Opinion filed 10/5/06. [Entry date Oct 5 2006] [AM]
	* * * *
10/17/06	Notice to counsel in re: Order FILED GRANTING to and inlcuding November 2, 2006, motion for a 14-day extension of time to file Petition for Rehearing and Rehearing en Banc by Appellee Warner Lambert Co., dated 10/17/06. [Entry date Oct 17 2006] [JP]
10/17/06	Appellee Warner Lambert Co. motion for a 14-day extension of time file Petition for Rehearing and Rehearing en Banc, filed with proof of service. [Entry date Oct 17 2006] [JP]

DATE	PROCEEDINGS
10/17/06	Order FILED GRANTING to and including November 2, 2006, motion for a 14-day extension of time to file Petition for Rehearing and Rehearing en Banc by Appellee Warner Lambert Co., endorsed on motion AH dated 10/17/2006. Extended Mandate due is 11/10/2006. Extended Petition for rehearing is 11/2/2006. [Entry date Oct 17 2006] [JP]
11/2/06	Warner-Lambert Company and Pfizer Inc., Petition for rehearing and petition for rehearing en bane filed with proof of service. [Entry date Nov 7 2006] [JP]
11/9/06	Movant Pharmaceutical Research and Manufactures of America motion file brief as amicus curiae in support of Defendants-Appellees' petition for Rehearing en Banc, filed with proof of service. [Entry date Nov 14 2006] [JP]
11/17/06	AMICUS CURIAE Pharmaceutical Research and Manufactures of America, brief in support of Petition for Rehearing filed with proof of service. [Entry date Jan 11 2007] [JP]
11/17/06	Order FILED GRANTING motion to file brief as amicus curiae in support of petition for rehearing by Amicus Curiae Pharmaceutical Research and Manufactures of America, endorsed on motion dated 11/9/2006. [Entry date Nov 21 2006] [JP]

DATE	PROCEEDINGS
11/21/06	Notice to counsel in re: Order FILED GRANTING motion to file brief as amicus curiae in support of petition for rehearing by Amicus Curiae. [Entry date Nov 21 2006] [JP]
1/18/07	Amended published signed opinion filed. (GC) [Entry date Jan 18 2007] [JP]
1/18/07	Amended Judgment filed. [Entry date Jan 18 2007] [JP]
	* * * *
1/31/07	Letter received from David Klinsberg Counsel for Appellees Warner-Lambert Company LLC and Pfizer Inc., dated 1/31/07 in re: advising this Court that the amended opinion does not alter the bases for rehearing and rehearing en banc set forth in the Petition. [Entry date Feb 6 2007] [JP]
2/12/07	Notice to counsel in re: Order FILED DENYING motion Petition for rehearing and petition for rehearing en banc by Appellees Defendants-Appellees Warner-Lambert Company LLC and Pfizer Inc. [Entry date Feb 12 2007] [JP]
2/12/07	Order FILED DENYING motion Petition for rehearing and petition for rehearing en banc by Appellees Defendants-Appellees Warner-Lambert Company LLC and Pfizer Inc. Entry date Feb 12 2007] [JP]

DATE	PROCEEDINGS
5/7/07	Judgment MANDATE ISSUED. CLOSED [Entry date May 7 2007] [JP]
5/7/07	Certified copy of the order filed 2/12/2007 issued to the district court, [informational only]. [Entry date May 7 2007] [JP]
5/8/07	Mandate receipt returned from the district court. [Entry date May 18 2007] [NS]
5/17/07	Notice of filing petition for Acevedo-Barreto, Aiello, Alfred, Aranda-Ramos, APPELLEES Kmart Corporation, Parke-Davis, Warner Lambert Co., ET AL , dated May 14, 2007 filed. Supreme Court #: 06-1498. [Entry date May 22 2007] [JP]
5/18/07	Mandate receipt returned from the district court. [Entry date May 18 2007] [DR]

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE
COUNTY OF WAYNE

No. 03-

NANCY FISHER, Individually; and NANCY FISHER,
Personal Representative of the
Estate of Troy Fisher, Deceased,
Plaintiffs,

v

PFIZER INC.; WARNER-LAMBERT COMPANY;
and PARKE-DAVIS, a division of
WARNER LAMBERT,
Defendants.

CHRISTOPHER S. VARJABEDIAN, P.C.
By: Vanessa G. Fluker P64870
Attorney for Plaintiffs
29777 Telegraph Road, Suite 2175
Southfield, Michigan 48034
(248) 355-0000

COMPLAINT AND JURY DEMAND

THERE IS NO OTHER PENDING OR RESOLVED CIVIL ACTION ARISING OUT OF THE TRANSACTION OR OCCURRENCE ALLEGED IN THIS COMPLAINT.

The plaintiffs say:

Jurisdiction / Venue Allegations

1. The parties reside in the following places:

   (a) Plaintiff Nancy Fisher resides in Wayne County, Michigan;

   (b) Defendant carries on a continuous and systematic part of its general business in Wayne County, Michigan.

2. This cause of action arose in Wayne County, Michigan.

3. The amount in controversy exceeds Twenty-Five Thousand and no/100 Dollars ($25,000.00), exclusive of interest, costs and attorney fees.

Factual Allegations

4. At issue in this case is defendants' concerted multi-year fraudulent and deceptive effort and pattern of practices to obtain, first, Food and Drug Administration ("FDA") approval for Rezulin, and, second, thereafter to reap the benefits of its commercial success. This is detailed hereinafter:

5. Type 2 diabetes is a life-threatening disease that affects 18 million Americans. It is a leading cause of coronary heart disease, blindness, kidney failure, and limb amputation.

6. On July 31, 1996, Warner-Lambert submitted a new drug application (NDA) for Rezulin with the

Food and Drug Administration. The company saw the drug as the next billion dollar blockbuster. And they were right. Sales to approximately 1.9 million diabetics generated revenues estimated at over $1.8 billion.

7. At the time the NDA was filed, Rezulin had already been selected as one of two drugs to be tested in a six-year, $150 million federally-funded Diabetes Prevention Program (DPP), a National Institutes of Health (NIH) clinical study examining ways to prevent or delay the onset of type 2 diabetes.

8. Rezulin's selection for the DPP was anything but a coincidence and illustrates a pattern of concealment, false and deceptive advertising and influence peddling to ensure the drug's success.

9. Dr. Richard C. Eastman, Director of the NIH's Division of Diabetes, Endocrinology and Metabolic Diseases, has been described as "the federal government's top diabetes researcher. [sic] In his own words, he had "overall global responsibility" for the DPP study. Dr. Eastman also wore another hat—Warner-Lambert employee. In his capacity as formal consultant to Warner-Lambert and as a member of the boards of two organizations financed by Warner-Lambert and the drug's developer, Sankyo Company—the "National Diabetes Education Initiative" and the "Rezulin National Speakers Bureau" —Dr. Eastman was an outspoken supporter of Rezulin. in exchange for that support, The Los Angeles Times reported that Dr. Eastman received in excess of $78,000 in compensation from Warner-Lambert and its affiliates.

10. With the NIH "seal of approval," FDA officials agreed to "fast-track" the drug and assigned John L.

Gueriguian, M.D. as the chief medical officer to oversee the six-month "priority" review.

11. After finding several serious health and safety concerns, Dr. Gueriguian recommended against approval of the drug in a detailed written evaluation dated October 9, 1996.

12. "I cited several reasons," Dr. Gueriguian explained in an interview published in the December 6, 1998 edition of The Los Angeles Times. "One of them was a telltale sign of very worrisome liver toxicity. I stand behind my review, absolutely."

13. Warner-Lambert's clinical trial data had shown that cases who had received Rezulin developed liver problems at four times the rate of controls who had received a placebo.

14. In addition to liver toxicity, Gueriguian had also expressed concerns about potential heart problems.

15. Gueriguian's review concluded, "Clearly, the sponsor has not made its case."

16. The negative recommendation came as no surprise to Warner-Lambert. Throughout his review of the drug, Dr. Gueriguian had "posed questions and expressed concerns to [Warner-Lambert's] director of worldwide regulatory affairs." In September 1996, Gueriguian had met with a Warner-Lambert representative and used "intemperate" language to describe the drug's prospects.

17. After the September 1996 meeting, the writing was not only on the wall, it was clearly on the way to being memorialized in a formal medical review and recommendation. Warner-Lambert acted quickly. Company executives complained to Dr. Gueriguian's

superiors, including Dr. Murray M. Lumpkin, Deputy Director of the FDA's Center for Drug Evaluation and Research (CDER). Shortly thereafter, Dr. Solomon Sobel, chief of the FDA's diabetes drug division, ordered Gueriguian's removal from the Rezulin review.

18. One FDA physician, who was involved in the "fast track" approval of Rezulin, elaborated on the events surrounding Gueriguian's removal in an interview with The Los Angeles Times: "Mac [Lumpkin] basically was hoping that the Gueriguian thing would go away and we could just kind of lose the review. . . . He [Lumpkin] just said that the Gueriguian review doesn't exist because it was in draft form and hadn't been finalized. . . Obviously, in hindsight, it should have been handled differently."

19. The Los Angeles Times further reported that, according to a number of sources, "before approving Rezulin, the FDA shared Gueriguian's review with Warner-Lambert and later purged the document from agency files."

20. Gueriguian was replaced by Dr. G. Alexander Fleming, an FDA team drug review leader. Fleming's medical review, as summarized in The Times, "noted that Warner-Lambert's clinical trials had identified 'significant safety issues' and that instances of liver injury 'suggested' unpredictable damage associated with Rezulin."

21. Fleming was assisted by Dr. Robert I. Misbin, a diabetes specialist, who was assigned to review the small-print language that would appear on Rezulin labels. One year later, Misbin would be faced with the task of reporting on deaths associated with Rezulin use.

22. On December 11, 1996, Fleming made a presentation to the FDA's Endocrinologic and Metabolic Drugs Advisory Committee. The Advisory Committee then voted 8 to 0 to recommend that the FDA approve Rezulin without any warnings about liver toxicity. Acting on the committee's recommendation, on January 29, 1997, the FDA approved Rezulin giving it "clearance for marketing".

23. However, three advisory committee members told The Los Angeles Times that they had never been told that 11 study participants had developed potentially life-threatening levels of liver toxicity and, as a consequence, had been taken off Rezulin, nor had they been told that Dr. Gueriguian had opposed the drug. The three panel members—Dr. D. Roger Illingworth, a metabolism and diabetes specialist at Oregon Health Sciences University in Portland; Dr. Jose Francisco Cara, a pediatric diabetes specialist in Detroit; and clinical pharmacist Colleen Colley with the Veterans Administration in Portland—all told The Los Angeles Times that they would have required liver-function monitoring as a condition of approval.

24. Two months later, in March 1997, Warner-Lambert began selling Rezulin. The drug's widely-publicized launch included a press release which claimed that Rezulin "is the first anti-diabetes drug designed to target insulin resistance." Warner-Lambert also represented that "Rezulin is the first anti-diabetes drug to work at the cellular level to improve insulin resistance directly enhancing the effects of circulating insulin. . . Until now other therapies lowered blood glucose by increasing insulin production or decreasing [liver] glucose output."

25. The launch prompted a quick response from the FDA. After reviewing the press release, the agency's drug-marketing and advertising division accused Warner-Lambert of making three "false and misleading" claims and recommended that Warner-Lambert "immediately discontinue" circulating the news release "and any other pieces containing the same or similar claims."

26. Warner-Lambert continued to aggressively publicize Rezulin in all media, including on the internet. The drug was touted by the company as a once-a-day pill for treating type 2 diabetes. Advertisements ran in Spanish as well as English to target the large Spanish-speaking diabetic population.

27. Among the misleading and deceptive claims made by Warner-Lambert were those which appeared in full-page, color magazine advertisements which described Rezulin as a drug with breakthrough effectiveness and "Side Effects Comparable to Placebo." A full-page ad making these claims ran in the May 1, 1997 edition of The New England Journal of Medicine.

28. The falsity of this claim is evidenced by Warner-Lambert's own clinical trial data which had been submitted to the FDA as part of the NDA. That data indicated that patients who had received Rezulin in clinical trials developed liver problems at four times the rate of controls who had received a placebo.

29. On August 4, 1997, the FDA broadened the approved uses of Rezulin. Rezulin could be used not only in combination with other Type 2 diabetes pills but also as a stand-alone or "mono" therapy.

30. Up until this point, Warner-Lambert had been successful in its efforts to keep the lid on serious and potentially life-threatening problems associated with Rezulin. By the fall of 1997, however, cases of serious liver injuries, including death after liver failure, in patients who had taken Rezulin began being reported to the FDA.

31. Dr. Misbin was placed in charge of evaluating the adverse event reports. At the time, he estimated that more than 12,000 Rezulin users would experience some liver injury. Misbin also advised his superiors that 2,000 of those patients might die unless their liver functions were closely monitored. In an interview published in the December 8, 1999 edition of The Los Angeles Times, Dr. Misbin elaborated: "I said to myself, 'At this very moment as I am writing this, there are 2,000 patients that are going to die of this drug unless we do something . . .' I mean, people were being treated with this drug and had no idea what was going on."

32. According to several news reports, including CBS News, Warner-Lambert had evidence of serious, and potentially life-threatening health problems, associated with Rezulin but had failed to inform the FDA. Specifically, CBS reported that in May 1997 Warner-Lambert had submitted documents to the FDA representing that none of the Rezulin trial participants had liver enzyme levels higher than "2 to 3 times . . . normal."

33. However, when Dr. Misbin subsequently investigated Warner-Lambert's representation, he found patients with liver enzymes far in excess of the levels reported by the company.

34. According to CBS News, "internal FDA documents show when Dr. Misbin raised the discrepancies, Warner-Lambert privately admitted its FDA report was 'not correct'."

35. Rezulin was allowed to remain on the market. However, the company was required to make the first of four safety label changes to Rezulin—each providing for closer monitoring of patients for elevated liver enzymes.

36. Citing "approximately 35 post-marketing reports of liver injury" in the U.S. and Japan,"[sic] the first label change was announced on November 3, 1997 and recommended liver enzyme testing routinely within the first one to two months, and every three months thereafter during the first year of treatment and periodically thereafter. The first label changes would not suffice and the next label change would come in less than one month.

37. News that Rezulin would soon be banned from sale in Great Britain reached the FDA. On November 26, 1997, Dr. Lumpkin spoke with an official at the British Medicines Control Agency about its imminent decision to ban further sales of Rezulin. The substance of that conversation was memorialized in an e-mail from Dr. Lumpkin to his boss, CDER Director Janet Woodcock, and six other FDA officials. As reported in the March 17, 2000 Los Angeles Times, the "impetus" for the decision was not the British drug regulatory agency but Glaxo-Wellcome, the company with rights to market Rezulin in Europe.

38. According to Lumpkin's e-mail, as paraphrased in The Los Angeles Times, "'[T]hey [Glaxo] no longer believed the risks outweighed the benefits' for at least two reasons: There was no way to predict which

Rezulin patients would be harmed, and the pace of liver injuries and deaths was by that point 'unacceptably high.'"

39. On March 22, 2000, faced with the incontrovertible statistics of a mounting death rate and documented cases of patients who were monitored in accordance with recommendations but still died of liver toxicity, Warner-Lambert agreed to withdraw Rezulin from the U.S. market.

40. Indeed, many safer and less expensive antidiabetic agents were available to patients being treated with Rezulin, both before and throughout the Class period.

41. Dr. Gueriguian summarized the Rezulin experience: "If [Rezulin] hadn't have been approved, at least 21 people would be alive now," he said. "In all probability, many more than that"

COUNT I

Negligence and Negligent Misrepresentation

42. The allegations contained in paragraphs 1 through 41 herein are hereby realleged and are fully incorporated herein.

43. Defendants owed a duty to consumers of Rezulin, including the Plaintiffs, to use reasonable care in designing, manufacturing, supplying, and selling Rezulin.

44. Defendants breached their duty of care, constituting negligence, as follows:

(a) Defendants failed to conduct adequate testing of the drug;

(b) Defendants failed to properly monitor and evaluate the drug's effect;

(c) Defendants concealed the clinical experience of the drug from the medical community, which included the medical personnel treating Plaintiffs;

(d) Defendants failed to fulfill the standard of care required of a reasonable, prudent pharmaceutical company engaged in the manufacture of a drug intended specifically for use by individuals suffering from diabetes;

(e) Defendants failed to adequately warn, of the dangers which it knew or should have known that the drug posed;

(f) Defendants failed to report adverse results of tests to the FDA, as required by law;

(g) Defendants placed the drug in commerce for sale and recommended its use to physicians without adequately warning physicians or other users of risks associated with the use of the drug;

(h) Defendants failed to properly market, advertise or distribute the drug, an inherently dangerous product, when they knew or should have known, that there existed dangers to users of Rezulin arising from the foreseeable and recommended use of the product;

(i) Defendants failed to disclose to the public, and to the Plaintiffs, in particular, facts relative to the drug being unsafe and a cause of dangerous side effects or complications; and

(j) Defendants failed to heed or further investigate adverse reaction reports submitted by

the medical community in order to determine whether the drug should be withdrawn from the market.

45. As a direct and proximate result of Plaintiff Troy Fisher's use of Rezulin, Plaintiff Troy Fisher suffered serious bodily injury and death, including but not limited to liver damage, renal damage, cardiac injury, cardiac/cardiovascular injury, significant weight gain and other physical and/or emotional injuries.

46. Defendants have, at all times material hereto, manufactured, promoted, sold, and distributed the drug in a manner which constituted gross, willful, malicious, reckless, and outrageous disregard for the consequences of its actions and omissions, including a criminal and culpable disregard for the consequences of its actions and omissions on the public.

47. Defendants had a duty to exercise reasonable care in the manufacture, sale, testing, quality assurance, quality control, and/or distribution of Rezulin into the stream of commerce including a duty to:

(a) assure that the product did not cause users to suffer from unreasonable, dangerous side effects;

(b) warn of dangerous side effects; and

(c) disclose adverse material facts when making representations of facts to Plaintiffs.

48. Defendants failed to exercise reasonable care in the manufacture, sale, testing, quality assurance, quality control, and/or distribution of Rezulin into the stream of commerce, because defendants knew or should have known that the use of this drug created

a high risk of unreasonable, dangerous side effects, including side effects such as, liver and heart failure, that can only be alleviated by liver transplant surgery or other invasive procedures and other side effects such as fatality.

49. Defendants breached their duty of reasonable care and duty to disclose material adverse facts to Plaintiffs by failing to use reasonable care in the design and manufacture of Rezulin so as to avoid liver toxicity; failing to provide sufficient accompanying warnings and/or indications concerning Rezulin and its health effects; failing to conduct adequate testing; and failing to ensure that Rezulin was used only in a manner for which it had been approved and which was safe.

50. Despite the fact that defendants knew or should have known that Rezulin caused unreasonable, dangerous side effects, defendants continued to market Rezulin to physicians and users, such as the Plaintiffs, when there were safer alternative treatments.

51. Defendants knew or should have known that Plaintiff Troy Fisher would foreseeably suffer injury as a result of defendants' failure to exercise reasonable care as described above.

52. Defendants intended that physicians and users, such as the Plaintiffs, rely upon their representations and statements and that physicians and users, such as the Plaintiff Troy Fisher, rely on defendants and their agents to inform them truthfully, accurately and fully about the serious adverse effects of Rezulin.

53. At the time of defendants' making of misrepresentations, misleading statements and/or omissions

about the safety of Rezulin, Plaintiffs were ignorant of their falsity. Plaintiffs relied upon defendants' superior knowledge and expertise and, justifiably, relied, to Plaintiffs' detriment, on defendants' representations and statements. Had Plaintiffs been aware of the true facts, Plaintiff Troy Fisher would not have purchased or used Rezulin.

54. By virtue of defendants' negligence and negligent misrepresentations, defendants have directly, foreseeably and proximately caused Plaintiffs to suffer serious bodily injury and death.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against Defendants manufacturer in an amount that will fairly and adequately compensate Plaintiffs for their injuries, together with the costs of this action, interest, and attorney fees.

COUNT II

Fraud and Misrepresentation

55. The allegations contained in paragraphs 1 through 54 of this Complaint are realleged and are fully incorporated herein by this reference.

56. Defendants failed to publish adequate precautionary statements warning consumers as more information about adverse reactions became available. Defendants continued to design, manufacture and market the product. Defendants fervently promoted to physicians and consumers the beneficial and safe use of the drug.

57. The product warnings in effect were inadequate to alert prescribing physicians and patients of the actual risks associated with this drug that was then known to the defendants.

58. Plaintiff Troy Fisher's physician prescribed, and Plaintiff purchased and used Rezulin in reliance upon the express and implied representations of material facts made by defendants, Pfizer Inc., Warner-Lambert and Park Davis, and their agents directly and indirectly through uniform advertisements, sales literature and other forms of marketing.

59. Plaintiff Troy Fisher's physician prescribed, and Plaintiff made the decision to use Rezulin reasonably relying on defendants and their agents to disclose known defects and side effects of the drug. Defendants' representations, statements and concealment regarding material facts was made for the purpose of inducing Plaintiff and Plaintiffs physician to rely upon them and prescribe, purchase and use Rezulin.

60. Defendants knew or recklessly disregarded the fact that their statements regarding the safety of Rezulin were false, misleading, incomplete, and/or untrue when made.

61. The uniform misrepresentations, misleading statements, material omissions, and the fraudulent concealment of material facts by defendants or their agents were made with the intention to deceive and defraud or to conceal the truth about the unsafe nature of Rezulin.

62. The uniform misrepresentations, misleading statements, material omissions, and the fraudulent concealment of material facts by defendants or their agents were made to induce the prescription of Rezulin by Plaintiff's physician and the purchase and use of Rezulin by Plaintiff in order to increase sales and profits.

63. Plaintiffs and Plaintiff Troy Fisher's physician had no knowledge of the falsity or incompleteness of defendants' statements and representations when Plaintiff purchased the Rezulin manufactured, marketed, distributed, and sold by defendants or their agents.

64. Plaintiffs and Plaintiff Troy Fisher's physician had a right to and did rely on defendants' uniform statements and representations. Defendants' uniform statements and representations, express or implied, concerning the safety and effectiveness of Rezulin, were material to the decision to prescribe, purchase and use that drug, in that Plaintiff's physician would not have prescribed, and Plaintiff would not have purchased and used the drug if they had known that such statements and representations of defendants were false, misleading, incomplete, and untrue.

65. At all times during the course of dealing between defendants, Plaintiffs physician, and Plaintiffs, defendants failed to disclose adequately material adverse information regarding the dangerous side effects of Rezulin, as alleged above.

66. Defendants were under a duty to disclose the defective and unsafe nature of Rezulin to physicians and users, such as Plaintiffs. Defendants had sole access to material facts concerning the defect, and defendants knew that physicians and users, such as Plaintiffs, could not have reasonably discovered the defect.

67. Defendants' omissions were made deliberately, willfully and maliciously to mislead physicians and users, such as Plaintiffs, into justifiable reliance and action thereon, and to cause physicians to prescribe and consumers such as Plaintiffs to purchase and use

Rezulin and believe that the drug was safe and not defective.

68. Plaintiffs had no way to determine that defendants were making these material misrepresentations or fraudulently concealing material facts. Had defendants disclosed the material information regarding the unsafe and defective nature of Rezulin, Plaintiffs would have been aware of the defect and would not have purchased and used the drug or continued to believe that the drug was fit for its intended purpose.

69. By reason of defendants' fraudulent concealment, material misrepresentations, misleading statements, and/or material omissions, Plaintiffs was caused to suffer from Rezulin.

70. Because defendants' conduct in perpetrating the fraud described above was malicious, willful, wanton, and oppressive, or in reckless disregard of the rights of Plaintiffs, the imposition of exemplary damages against defendants is warranted.

71. As a result of defendants' fraud, Plaintiffs suffered serious bodily injury and death for which medical treatment was required and received.

72. As a direct and proximate result of Plaintiff Troy Fisher's use of Rezulin, Plaintiffs suffered serious bodily injury and death, including but not limited to liver damage, renal damage, cardiac injury, cardiac/cardiovascular injury, significant weight gain and/or other physical and/or emotional conditions.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against Defendants manufacturer in an amount that will fairly and adequately compensate Plaintiffs for their

injuries, together with the costs of this action, interest, and attorney fees.

COUNT III

Breach of Express Warranty

73. The allegations contained in paragraphs 1 through 72 are realleged and are fully incorporated herein by this reference.

74. Defendants through description, affirmation of fact and promises relating to their drug products to the FDA, prescribing physicians and the general public, including the Plaintiffs herein, expressly warranted that Rezulin was both efficacious and safe for its intended use.

75. These warranties came in the form of: (i) publicly made written and verbal assurances of safety and efficacy by defendants pursuant to and following FDA approval, including but not limited to statements of clinical data that purported to report the incidence of adverse experiences with Rezulin, but which in fact grossly understated such incidence; (ii) press releases, interviews, and dissemination via the media of promotional information the sole purpose of which was to create demand for Rezulin, but which failed utterly to warn of the risks inherent to ingestion of Rezulin or the indications thereof; (iii) verbal assurances made by defendants' sales force to prescribing physicians of the safety and efficacy of defendants' anti-diabetes drug, and the downplaying of any indicia of risk associated with such drug; (iv) false and misleading written information, supplied by defendants, and published to Physicians.

76. Plaintiffs further alleges, that all of the aforementioned written materials are known to defen-

dants and in their possession, and it is Plaintiffs' reasonable belief that said materials shall be produced by defendants, Pfizer, Inc., Warner-Lambert and Parke Davis and be made of record once Plaintiffs are afforded the opportunity to conduct Discovery.

77. At the time of the making of these express warranties, defendants had knowledge of the purpose for which Rezulin was to be used and warranted it to be in all respects safe, effective and proper for such purpose.

78. Defendants themselves drafted the documents and/or made the statements upon which these express warranty claims are based, and in so doing, defined the terms of those warranties.

79. Rezulin does not conform to these express representations in that Rezulin is not safe and produces serious side effects, including life threatening liver injury.

80. As such, defendants' drug product was neither in conformity to the promises, descriptions or affirmations of fact made of this drug by the defendants, nor adequately contained, packaged, or labeled, or fit for the ordinary purposes for which such drugs are used.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against Defendants manufacturer in an amount that will fairly and adequately compensate Plaintiffs for their injuries, together with the costs of this action, interest, and attorney fees.

COUNT IV

Loss of Consortium

81. The allegations contained in paragraphs 1 through 80 are realleged and are fully incorporated herein by this reference.

82. At all relevant times, Plaintiff Nancy Fisher was the lawfully wedded spouse of Plaintiff Troy Fisher.

83. As a proximate result of the negligence, breach of implied warranty, and breach of express warranty by Defendants manufacturer, Plaintiff Nancy Fisher suffered loss of consortium, loss of society and companionship, and other damages.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter judgment against Defendants manufacturer in an amount that will fairly and adequately compensate Plaintiffs for their injuries, together with the costs of this action, interest, and attorney fees.

Respectfully submitted,

CHRISTOPHER S. VARJABEDIAN, P.C.

/s/ Vanessa G. Fluker
VANESSA G. FLUKER (P64780)
Attorney for Plaintiffs

Dated: December 18, 2003

DEMAND FOR JURY TRIAL

Plaintiffs demand trial by jury on all issues so triable.

Respectfully submitted,

CHRISTOPHER S. VARJABEDIAN, P.C.

/s/ Vanessa G. Fluker
VANESSA G. FLUKER P64780
Attorney for Plaintiffs

Dated: December 18, 2003

SUPREME COURT OF THE UNITED STATES

No. 06-1498

WARNER-LAMBERT CO., LLC, *et al.*,
Petitioners,

v.

KIMBERLY KENT, *et al.*,

ON PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Second Circuit, No. 05-1705, 05-1743, 05-1745.

ON CONSIDERATION of the petition for a writ of certiorari herein to the United States Court of Appeals for the Second Circuit.

IT IS ORDERED by this Court that the said petition is granted. The brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, November 5, 2007. The brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Monday, December 3, 2007. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 2 p.m., Friday, December 28, 2007. Briefs of *amici curiae* are to be filed with the Clerk and served upon counsel for the parties on or before 2 p.m., 7 days after the brief for the party supported is filed, or if in support of neither party, within 7 days after the petitioners' brief is filed.

The Chief Justice took no part in the consideration or decision of this petition.

September 25, 2007

A true copy WILLIAM K. SUTER
Test:
Clerk of the Supreme Court of the United States
By _____
Deputy